100TH CONGRESS
2d Session

SENATE

REPORT
100-516

THE COMPUTER MATCHING AND PRIVACY PROTECTION ACT OF 1987

REPORT

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 496

TO AMEND TITLE 5 OF THE UNITED STATES CODE, TO ENSURE PRIVACY, INTEGRITY, AND VERIFICATION OF DATA DISCLOSED FOR COMPUTER MATCHING, TO ESTABLISH DATA INTEGRITY BOARDS WITHIN FEDERAL AGENCIES, AND FOR OTHER PURPOSES

SEPTEMBER 15 (legislative day, SEPTEMBER 7), 1988.—Ordered to be printed

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Mr. GLENN, from the Committee on Governmental Affairs, submitted the following

REPORT

[To accompany S. 496]

The Committee on Governmental Affairs, to which was referred the bill (S. 496) to amend title 5 of the United States Code, to ensure privacy, integrity, and verification of data for computer matching, to establish Data Integrity Boards within Federal agencies, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

CONTENTS

		Page
I.	Purpose and History of S. 496	1
II.	Background: Definition and History of Computer Matching	2
III.	The Senate Oversight of Government Management Subcommittee's Investigation of Computer Matching	3
IV.	Provisions of S. 496	9
V.	Section-by-Section Analysis	22
VI.	Estimated Cost of Legislation	26
VII.	Evaluation of Regualtory Impact	28
VIII.	Changes in Existing Law	28

I. PURPOSE AND HISTORY OF S. 496

The purpose of S. 496, the Computer Matching and Privacy Protection Act of 1987, is to improve the oversight and procedures governing the disclosures of personal information in computer matching programs and to protect the privacy and due process rights of individuals whose records are exchanged in such matching programs.

S. 496 was reported unanimously by the Committee on Governmental Affairs on May 20, 1987, and was passed by the Senate on May 21, 1987. The House of Representatives passed S. 496 on

August 1, 1988, substituting the text of H.R. 4699, a companion bill to S. 496, in lieu of the Senate language. The House amendment includes many of the same provisions of the Senate-passed version. This report discusses the provisions of S. 496, as passed by the Senate, and notes changes made to S. 496 by the House amendment.

II. Background: Definition and History of Computer Matching

Computer matching is the computer-assisted comparison of two or more automated lists or files to identify inconsistencies or irregularities among the lists or files. For example, the Department of Education's list of delinquent student loans could be cross-checked with lists of federal employees to determine whether any student loan defaulters work for the federal government. Comparisons can involve the matching of names, Social Security numbers, addresses, government contract numbers, or other personal identifiers. Most computer matching is performed to detect fraud, error, or abuse in government programs or to determine whether a specific applicant or recipient of benefits under a government program truly qualifies for benefits.

The first major computer matching program conducted by the federal government dates back to 1977, when the U.S. Department of Health, Education, and Welfare used this computer technique to detect overpayments in its Aid to Families with Dependent Children (AFDC) program. This effort entitled "Project Match," compared the records of approximately 78 percent of all recipients of AFDC with the payroll records of about three million federal employees, in order to detect those who might be illegally drawing welfare payments. A pilot match conducted in the District of Columbia identified over $330,000 in possibly incorrect payments being made to individuals. Prior to this project, only a small number of small-scale computer matches had been conducted by the federal government.

Subsequent to Project Match, Inspectors General in various agencies adopted computer matching as an audit tool to detect fraud error, or abuse in federal benefit programs. The Inspector General at the Department of Agriculture, for example, conducted several computer matches of Food Stamp records with other welfare benefit programs in selected states to determine whether ineligible individuals were receiving food stamps. In 1978, this same office within the Department of Agriculture matched emergency loans of the Farmers' Home Administration with disaster loan records of the Small Business Administration, finding excess loans amounting to $2,300,000. The Inspector General reported that by the end of 1981, over $1.25 million in such excess loan amounts had been recovered, with the actual match costing the IG's office $50,000 to conduct.

In 1979, faced with the growing use of computer matching to detect fraud, error or abuse in government programs, the Office of Management and Budget (OMB) issued "Guidelines on the Conduct of Computer Matching Programs". The stated purpose of these guidelines was to aid agencies conducting computer matching programs in "balancing the government's need to maintain the integrity of Federal programs with the individual's right to personal pri-

vacy." The guidelines included analyses that should be made by agencies in deciding whether to conduct a matching program, as well as reporting and publication provisions.

In addition to the growing use of computer matches by agencies as an administrative tool for auditing programs, the Congress had also, by the late 1970, mandated the use of matching in certain government benefit programs to check the eligibility of persons participating in these programs. Public Law 95–216, for example, requires state welfare agencies to use wage information contained in State Employment Security Agency files or in Social Security files to determine AFDC eligibility and payment amounts. Legislation passed by the Congress in 1981 also mandated wage matching for the Food Stamp program.

In 1981, the President's Council on Integrity and Efficiency [PCIE], comprised of the Inspectors General and chaired by the Deputy Director of OMB, formed the Long-Term Computer Matching Project to promote the use of computer matching by federal and state agencies. This project sought to gather information about federal and state matching activities, identify and remove technical and administrative obstacles to computer matching, and foster federal and state cooperation in exchanging records for computer matching purposes. One of the earliest tasks completed by the project was the revision of the OMB guidelines governing computer matching programs in order to streamline the administrative requirements for conducting computer matching programs. Through the PCIE, the Reagan Administration has endorsed computer matching as a useful tool to combat fraud and to increase government efficiency.

III. The Senate Oversight of Government Management Subcommittee's Investigation of Computer Matching

The promotion of computer matching by the PCIE to detect fraud and abuse and the increasing statutory requirements to match records from different programs to check eligibility for government benefits spurred the Senate Subcommittee on Oversight of Government Management, under the chairmanship of Senator William S. Cohen, to investigate this auditing technique to determine its ramifications for both the government and private citizens. The Subcommittee was particularly interested in charges made by privacy and public interest groups that computer matching could adversely affect the privacy and due process rights of individuals. Since 1981, the Subcommittee has held two sets of oversight hearings on computer matching programs: The first, in December 1982, focused on the oversight of computer matching programs to detect fraud and mismanagement in government programs; the second, on June 6, 1984, focused on the use of tax records in computer matching programs. At these hearings, the Subcommittee heard and received testimony from several witnesses representing both the federal government and state government agencies, on the use of matching programs to detect fraud, error, or overpayments, as well as from privacy experts and the General Accounting Office. During its investigation, the Subcommittee also closely monitored statutory and administrative developments relating to computer matching

programs at both federal and state levels of government. As a result of these hearings, Senators Cohen and Carl Levin introduced S. 2756, the Computer Matching and Privacy Protection Act of 1986, on August 14, 1986. A revised version of this bill, S. 496, the Computer Matching and Privacy Protection Act of 1987, was introduced by Senators Cohen and Levin on February 5, 1987.

A. CURRENT SCOPE OF COMPUTER MATCHING

There has been a dramatic increase in the use of computer matching programs since 1980 by both federal and state government agencies. Although the precise number of matches that have been conducted during this period is difficult to quantify due to the lack of a comprehensive reporting mechanism, the Office of Technology Assessment testified that the number of computer matches nearly tripled between 1980 and 1984. The number of records on individual citizens exchanged in these matching programs is staggering. An OTA survey, conducted in 1986, for example, found that 7 billion records were exchanged in only 20 percent of all computer matching programs reported at the federal level between 1980 and 1985.

The increase in the number of computer matching programs has been facilitated by several statutory provisions that require agencies to exchange personal information, most often in the form of computer matching programs. The Debt Collection Act of 1982, for example, establishes a data-sharing system between federal agencies and private credit reporting agencies in order to increase the collection of delinquent non-tax debts, through such mechanisms as offsetting the salaries of federal employees to satisfy debts owed to the government, screening credit applicants against the IRS files to check for tax delinquencies, and referring delinquent non-tax debts to credit bureaus to affect credit ratings. Other statutes authorize specific computer matches, such as the Department of Defense Authorization Act of 1982, which requires the Secretary of Education to prescribe methods for verifying that individuals receiving grants, loans, or work assistance under Title IV of the Higher Education Act of 1965 have complied with military registration requirements.

The most extensive computer matching program specifically authorized by Congress to date is the "IEVS" system (Income Eligibility Verification System), mandated by the Deficit Reduction Act of 1984 (DEFRA). Under this system, the Social Security Administration's Supplemental Security Income (SSI) program and state agencies administering the AFDC, Food Stamp, Medicaid, federal unemployment compensation programs, and Social Security adult assistance programs must request and use unearned income data from the Internal Revenue Service to determine the eligibility of applicants to and recipients of these assistance programs. DEFRA also strengthened the authority of the AFDC and Food Stamp programs to use wage data from the Social Security Administration and from state employment agencies for eligibility verification purposes. In a typical IEVS match, each state agency administering these benefit programs will send their computer tapes of applicants or recipients to IRS or SSA, which will in turn match the tapes of applicants

and recipients with their own files and provide the states with unearned income (i.e., interest and dividend earnings) and wage data on the names submitted by the states. The states use this information to determine whether applicants or recipients have unreported assets or income earned in excess of the amounts allowed under the Food Stamp, AFDC, and other federal benefit programs. In the aggregate, the matches of applicants in these programs with IRS records would result in approximately 250,000 records on public assistance being matched against a file containing unearned income data on nearly 180 million persons.

B. BENEFITS OF COMPUTER MATCHING PROGRAMS

Computer matching programs can be, if conducted properly, a useful tool to ensure the integrity and efficiency of government programs. The Office of Management and Budget and the President's Council on Integrity and Efficiency have attributed substantial savings and recoveries of overpayments in federal benefit programs to the use of comptuer matching. Savings can be realized from matching records of recipients in federal benefit programs with the files of other agencies or programs to verify the eligibility of individuals currently receiving benefits. In July 1985, for example, the records of four million Supplemental Security Income recipients were matched with the unearned income files of the Internal Revenue Service. This match identified $117.5 million in overpayments for which recovery action was instituted. The Social Security Administration reported that the total cost of conducting this match, including the cost of follow-up, was $6.4 million. Similarly, in October 1985, the State of Missouri matched SSI data files with Medicaid files to identify individuals who were residing in Medicaid-reimbursed facilities but receiving full SSI payments. This match identified over $44,000 in overpayments while costing only $10,000 to conduct the match.

Significant savings have also been attributed to computer matching performed for the purpose of debt collection. The Department of Education, for example, reported that a computer match of delinquent student loan debtors against federal employee active and retired rolls conducted in 1982 recovered $3.4 million in delinquent loan payments. The Congress has, through the enactment of the Debt Collection Act of 1982, recognized that the cross-checking of lists of applicants for and recipients of loan assistance with Internal Revenue Service delinquent tax files and the matching of federal employees' Social Security numbers with the delinquent debt files of other federal credit agencies can result in savings to the federal government.

Deterrence and management improvement are other means by which computer matching can achieve potential savings for the federal government. While difficult to quantity, some Inspectors General have noted that computer matching, when announced to the public, has acted as a deterrent against future fraud. Inspector General of the Department of Health and Human Services (HHS), Richard P. Kusserow, testified before the Oversight Subcommittee that:

> There is also considerable evidence that cleaning up a data base and front-end matching have a deterrent effect. For example, a number of individuals in one state asked that their names be removed from Food Stamp rolls following a public report of a match of public assistance with state employment and other records . . . This phenomenon of voluntary withdrawal from the program when a technique is announced is more the rule than the exception.

Similarly, computer matches can result in management improvement in federal benefit programs. The results of a match could, for example, be used to identify information that should be asked of applicants for benefit programs that would prevent the enrollment of those who do not qualify for program participation, or could identify poor data that exists in certain systems of records used in matching, such as erroneous Social Security numbers. Such improvements in the internal or management controls of government programs could result in significant savings to the government over long periods of time.

C. CONCERNS RAISED BY COMPUTER MATCHING

While computer matching can be a useful administrative tool for federal and state government agencies, the current use of this technique raises substantial policy concerns. Several Congressional reviews of computer matching programs, including those conducted by the Senate Subcommittee on Oversight of Government Management, the House Committee on Government Operations, the Office of Technology Assessment, and the General Accounting Office, as well as private sector assessments of the use of computer matching made by the American Bar Association and the American Civil Liberties Union, have concluded that the exchange and use of personal information in computer matching programs, unless adequately overseen and administratively controlled, can pose significant risks to the due process and privacy rights of individuals. These reports further conclude that the current oversight of computer matching programs conducted within the Executive Branch is inadequate, and that the extent of computer matching programs, while undoubtedly increasing, is unknown.

1. Privacy and Due Process Concerns

Although the Privacy Act of 1974 (5 U.S.C. sec. 552a) preceded the development and use of computer matching, in passing the law the Congress expressed concern that "the increasing use of computers and sophisticated information technology, while essential to the efficient operations of the Government, has greatly magnified the harm to individual privacy that can occur from any collection, maintenance, use, or dissemination of personal information." The Act, therefore, makes any system of records from which information is retrieved using personal identifiers (such as name, Social Security number, or claim number) subject to its provisions.

Over the years, such systems have been subject to implementing guidelines and instructions pertaining to the Act. For example, the Office of Management and Budget has issued guidance to agencies on how to relate the procedural requirements of the Privacy Act of

1974 to the use of computerized matching programs. Despite the existence of this guidance, however, concerns still exist that computer matching may be conducted in a manner that is intrusive to the personal privacy of individuals whose records are matched. Privacy advocates have expressed concerns, for example, that some matching programs may, if unchecked, constitute broad "fishing expeditions" potentially in violation of the Fourth Amendment right against unreasonable searches and seizures.

Testimony before the Senate Oversight Subcommittee indicated that the Privacy Act has, in practice, done little to restrict disclosures for computer matching programs. The Office of Technology Assessment has concluded, for example, that "the Privacy Act as interpreted by the courts and OMB guidelines offer little protection to individuals who are the subjects of computer matching."

Studies of computer matching programs have also concluded that the use of information from computer matching programs to deny, suspend, or reduce federal benefits, or take other adverse actions against individuals should incorporate due process protections. The need for due process procedures in matching programs is illustrated vividly by a computer matching program that was conducted by the State of Massachusetts in 1982. In that program, lists of welfare recipients were matched against bank records in order to identify individuals who had assets in excess of the amounts allowed by law. Over 1600 welfare recipients were identified as having excess assets and were immediately sent termination notices without any action being taken by the Massachusetts Welfare Department to verify the accuracy of the information used in or produced by the match, or to obtain explanations on whether the assets found in the bank accounts were allowed under existing regulations.

The failure to verify the accuracy of the "hits" produced by the matching program resulted in a significantly high rate of appeals and reversals of the terminations in the Massachusetts bank match case. The appeals rate was six times higher than the usual rate of appeals for terminations. Of those that appealed, half of the errors involved mistakes in the Social Security numbers used. In these cases, the recipient did not really have the assets that were indicated by the matching program. Some of the terminations were reversed on appeal because the assets identified by the matching program were funds held in trusts for others, funds held in joint accounts, or funds for burial expenses, none of which would have rendered an individual ineligible for welfare benefits.

Since that experience, the Massachusetts Department of Public Welfare has verified its "raw hits" prior to taking action on matches. In 1983, such verification refined the 6,482 "raw hits" revealed in a bank matching program to 1,328. Further fact-finding conferences reduced this number to 493 cases, which were sent termination notices. Of the 493 families sent notices, 384 cases were found to have assets in excess of allowable amounts under the welfare programs. The final number of verified cases of ineligible persons is only six per cent of the original hits identified in the match.

While the Committee recognizes that verification practices of federal agencies conducting matching programs have generally improved since the 1982 Massachusetts bank match experience, that case clearly illustrates the consequences of taking steps to reduce

or deny benefits on the basis of faulty data. Due process requires that individuals should not be subject to adverse actions solely on the basis of data that has been inadequately verified for accuracy. Instead, government agencies conducting computer matches should be required to take steps to verify the accuracy, timeliness, and completeness of data that is used as the basis for adverse action against individuals. Moreover, due process requires that individuals receive adequate notice of any proposed action to be taken by the government and be provided an opportunity to contest the accuracy of the information which underlies the government action.

There is broad consensus that basic due process protections should be provided for individuals who are the subjects of computer matching programs. Congress has begun to incorporate procedural safeguards for individuals in matches that it has mandated by law. The Deficit Reduction Act of 1984, for example, requires agencies to independently verify the information derived from computer matches, as well as provide notice and an opportunity for individuals to contest information before reducing, suspending, or denying federal benefits based on the results of the computer matching programs required by that law. The President's Council on Integrity and Efficiency has also recognized the need for due process protections in computer matching programs. The current Chairman of the PCIE, Deputy Director of OMB Joseph R. Wright, Jr., testified before a House Government Operations Subcommittee that the verification and notice provisions required by S. 496:

> provide an adequate measure of privacy and due process protection to individuals subject to eligibility tests through matching programs and front-end eligibility verification programs. Because of the errors that may be part of any matching program and the harm that the use of unverified information may cause, we feel strongly that these steps must be taken to protect individual privacy.

While Congress has required such notice and verification requirements in some computer matches mandated by law, many computer matches involving the records of individuals are conducted under other, more general statutory authorities. In such cases, a danger exists that individuals whose records are matched may have their federal benefits denied, suspended, or reduced, or have other adverse action taken against them, solely on the basis of out-of-date or faulty information, and have no opportunity to contest the accuracy of such information.

2. Need for Administrative Controls on Computer Matching

Studies and congressional hearings on computer matching also indicate that there are inadequate administrative controls in place to oversee the current use of computer matching programs involving records that are subject to the Privacy Act. Although the Office of Management and Budget has issued guidelines advising agencies conducting matches to enter into agreements governing the use of the records exchanged in the matching programs and requiring such agencies to file matching reports describing the matching programs with OMB, these guidelines are not binding on agencies. Testimony before subcommittees of both the Senate Governmental

Affairs Committee and the House Government Operations Committee indicate that OMB has not enforced its matching guidelines, which require a brief description of the match and publication of the description of the match in the Federal Register "as close to the initiation of the matching program as possible". Testimony also disclosed that OMB does not routinely monitor the agencies' compliance with its guidelines. Both the General Accounting Office and the Office of Technology Assessment have concluded that there is little oversight of controls on how computer matching is conducted, and that no specific written criteria exist for determining whether a proposed match should be implemented.

The lack of administrative controls on matching has also resulted in a dearth of information on the precise extent of computer matching, and how many records of individuals are being exchanged in such programs. While the OTA has estimated that the number of computer matches has tripled from 1980 to 1984, the lack of accountability governing matching programs prevents agency decision-makers, OMB, Congress, and, indeed, those individuals whose records are being matched, from knowing how much matching actually occurs.

IV. Provisions of S. 496

The provisions of S. 496 are intended to address the privacy, due process, and administrative oversight concerns raised by the current state of computer matching. The bill contains three main elements:

(1) It requires that agencies participating in "computer matching programs" (a term defined by the bill) enter into written matching agreements outlining the terms of disclosure and use of information employed and produced by the matching program. No disclosure of information may be made for computer matching purposes unless a matching agreement has been approved.

(2) It requires the establishment of a Data Integrity Board within each agency that conducts or participates in a matching program. The function of the Data Integrity Board is to oversee and coordinate the implementation of this Act by reviewing and approving matching agreements and by reviewing the matches in which its agency has participated in the past year to determine compliance with applicable laws, regulations, guidelines, and agency agreements, and to assess the cost and benefits of such programs.

(3) It requires the establishment of procedural safeguards for individuals whose records are matched in programs covered by the Act, including requirements for the independent verification of information yielded by computer matches, and notice to and opportunity for individuals to contest the findings of computer matching programs prior to adverse actions being taken against such individuals.

1. Computer Matching Covered By the Act

Section 5 of the bill defines the computer matching programs that are covered by this Act. In order to be subject to the bill's pro-

visions, the matching program must meet three criteria. First, at least one set of the records involved in the matching program must be a system of records as defined by and subject to the Privacy Act. Under the Privacy Act of 1974, a "system of records" is defined as "a group of records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual."

Since by far most Privacy Act systems of records are maintained by federal agencies, the bill will generally cover only matches involving a federal agency as a source or recipient of information. As spelled out in the Senate-passed bill, this means that matching programs can involve the exchange of records between two federal agencies, or between a federal agency and a non-federal matching entity. "A non-federal matching entity" is defined by the bill as a state or local government, or an agency thereof, a partnership or corporation, association, or public or private organization which receives or supplies records in a matching program within the scope of this bill.

Second, the definition of matching program extends only to the *computerized* comparison of sets of records. Thus, while separate sets of records are often compared manually to verify the eligibility of individuals to receive government benefits, such manual comparisons are not covered by this bill.

Finally, to meet the definition of a matching program under the bill, the matching program must fall into one of three general categories of computer matches set forth in section 5. The first category of matching programs are those programs that are conducted for the purpose of establishing or verifying the eligibility of persons initially to receive or to continue to receive assistance under federal benefit programs. Matches conducted for such eligibility verification purposes include those matches that are conducted to determine initial eligibility for benefits (so-called "front-end eligibility verification" matches), or continuing compliance with statutory and regulatory requirements for recipients or beneficiaries of, participants in, or providers of services for assistance under federal benefit programs. Such assistance can take the form of cash or in-kind assistance or payments under federal benefit programs. The term "federal benefit program" is broadly defined, and is intended to include any program administered or funded by the federal government, or by a state or agent on behalf of the federal government. A match to determine eligibility of AFDC recipients, for example, is covered by the bill (since AFDC is a state-administered, federally funded program) so long as the AFDC records are matched with a Privacy Act system of records.

The second category of matching programs subject to the bill are those matching programs conducted for the purpose of recouping payments or delinquent debts under federal benefit programs. As used in the bill, the term "payments" is intended to cover both cash or in-kind assistance under such benefit programs.

Inclusion of matches under these two categories is determined by the purpose for conducting the match. Thus, for example, matches conducted by the Federal Parent Locator Service, within HHS, are not subject to the provisions of S. 496 because these matches are

conducted to locate absent parents who are not paying child support in order to take action against them to secure such child support payments. The Committee does not intend the bill to be construed to apply to matches performed by the Federal Parent Locator Service to locate absent parents even though such payments may result in a recoupment of payments made by a federal benefit program, such as Aid to Families with Dependent Children. The federal benefit recoupment is not the principal purpose of the matching activity.

The third category of matches covered by the bill are all matching programs using federal personnel or payroll systems of records, regardless of the purpose of the match. The bill covers these types of records because, historically, many matching programs have involved the records of federal employees or federal retirees. Since the federal government has comprehensive records on its own employees and retirees, these records are often exchanged in matching programs to determine whether federal workers or retirees are receiving benefits for which they are ineligible, or whether they have delinquent debts with the government. Because the files on these individuals are most readily available to agencies for use in matching programs, concerns have been raised that these individuals are "captives" of matching programs and could, unless protected, be most vulnerable to breaches of privacy in matching programs. Thus, the bill covers all matches involving these records, regardless of purpose, unless the match is specifically subject to exceptions discussed below. This category includes matches between two federal systems of records as well as matches between a federal system of records and non-federal records.

The number of records matched is not a determining factor of whether a match is covered by this bill. A matching program can consist of hundreds of records of recipients being matched at one time, or a series of one individual's records being cross-checked against various sets of data to verify eligibility. A comparison of six individual student loan defaultees with the Office of Personnel Managment files would, for example, be subject to the requirements of this bill. Unlike current OMB guidelines which do not apply to front-end eligibility verification or to matching programs that do not compare a substantial number of records, checks on specific individuals to verify data in an application and single matches to verify eligibility of a particular individual are subject to the bill.

There are six types of matching activities that are specifically exempted from the scope of S. 496. First, a match that is performed to produce aggregate statistical data without personal identifiers is not covered by the bill.

Second, a match performed to support any research or statistical project is excluded from coverage of the bill if no data resulting from the match is used to make decisions concerning the rights, benefits, or privileges of specific individuals.

A third exemption exists for purely internal matches, i.e., matches performed within a single agency in which no records are matched outside that agency or one of its components. An important limitation, however, is placed on this exception. The exception does not apply if the agency is matching its federal personnel or

payroll records with the records of the Federal benefit programs it administers. For example, the bill covers internal agency matches of federal personnel records with federal benefit programs to find potential fraud or to determine if the agency's employees are improperly receiving these benefits or whether they are delinquent in repaying federal loans. These matches are subject to the terms of this bill, because federal employees workers merit the same due process and privacy as do other citizens whose records are matched.

A fourth exception exists for certain matches conducted for law enforcement purposes. This exception is available only to those agencies, or components thereof, which perform as their principal function any activity pertaining to the enforcement of criminal laws.

An agency that is not principally a law enforcement agency may still have a component that can utilize this exclusion for specific matching activities. While an audit office that performs multiple functions, only one of which is the initiation of criminal law enforcement investigations, would not qualify for this exclusion, a clearly identifiable investigative subunit that conducts criminal investigations as its principal function may qualify for this exclusion. For example, the entire Internal Revenue Service would not qualify to use this law enforcement exclusion, but some matches conducted by the Criminal Investigations Division of the IRS could qualify for the exclusion.

Agencies or components that qualify for this exclusion may use it only for matching programs that are conducted subsequent to the initiation of a specific criminal or civil investigation of a named person or persons for the purpose of gathering evidence against such person or persons. In order to qualify for this exclusion, an agency or component must be gathering evidence for an existing, on-going investigation whose targets are already identified.

This exclusion is consistent with the bill's overall intent to provide protections against the imporper use of computer matching. Matches of greatest concern and warranting most controls are those matches that are initiated without any evidence of wrongdoing by specific individuals. Such matching programs, if uncontrolled, can too easily become "fishing expeditions" to find information about individuals when there is no suspicion of wrongdoing, risking violation of the Fourth Amendment prohibition against unreasonable search and seizure. Computer matching may, however, be needed to substantiate or develop a legitimate law enforcement investigation. This legislation is not intended to impede exchanges of information which will contribute to a specific, targeted investigation. Thus, once a law enforcement investigation meets the requirements of the subsection, section 5 provides a total exclusion from the bill's coverage.

The phrase "named individual or named individuals" is intended to mean that the investigation has already identified specific individuals as its targets. A general description of targets, such as "program beneficiaries," would be insufficient to meet this definition. Moreover, there must be a reasonable basis for believing that each of the identified targets of the investigation has engaged in

the improper conduct that is being investigated by the agency or component thereof.

The fifth exclusion covers certain matching activities conducted by the Internal Revenue Service. The Senate-passed bill limited this exclusion to only those tax matches that are conducted pursuant to section 6103(d) of the Internal Revenue Code of 1986, authorizing disclosures of tax returns and tax return information to state tax officials for tax administration purposes.

The House-passed version of S. 496 added two additional exclusions for matching programs involving tax records, both of which are acceptable to the Committee. One such provision provides a limited exception for disclosures of tax returns and tax return information for purposes of tax administration as defined in section 6103(b)(4) of the Internal Revenue Code of 1986. This exclusion is intended to cover only those disclosures that are authorized by this section of the Internal Revenue Code and which are conducted for the purpose of tax administration. This exclusion will enable the IRS to continue matching tax returns with other information, such as interest and dividend payments, to facilitate tax administration and ensure taxpayer compliance. This provision, however, is intended to be a narrow one and does not exclude matching of tax information with other data for non-tax administration purposes.

The other exclusion provided for by the House amendment covers matches of tax information for the purpose of intercepting tax refunds due to individuals. S. 496, as reported by the Committee and passed by the Senate, did not exclude these matches due to concerns over the growing trend of offsetting tax refunds to recoup overdue debts or overpayments under other government programs. There is preliminary evidence that the use of such refund offsets can have detrimental effects on voluntary compliance with our tax laws. Individuals may avoid paying federal income taxes or underwithhold in order to avoid refund offsets in subsequent years. The House-passed amendment to S. 496, however, exempts certain tax refund offset programs from the legislation. Specifically, the House amendment excludes matches of tax information for the purpose of intercepting a tax refund due to an individual under authority granted by section 464 or 1137 of the Social Security Act (42 U.S.C. sections 664,1320 b–7). This exemption excludes from the bill's coverage matches conducted under these statutory authorities to collect past-due child support from tax refunds and matches of tax information for the purpose of intercepting tax refunds due to individuals under the income and eligibility verification system established by section 1137 of the Social Security Act (42 U.S.C. 1320 b–7). Further, the House amendment exempts refund offset programs which have been determined by the Office of Management and Budget to contain verification, notice and hearing requirements that are substantially similar to those strong procedures contained in Section 1137 of the Social Security Act. These provisions of the House amendment are acceptable to the Committee, because the Committee believes that the due process procedures included in Sections 464 and 1134 of the Social Security Act are sufficiently strong to meet the purposes of this bill. Requiring these matches also to be subject to the provisions of S. 496 would result in duplicative, costly procedures for agencies to follow.

Finally, S. 496 provides an exclusion for matches performed to produce background checks for security clearances of federal personnel. The House amendments to S. 496 added an additional exemption, which is acceptable to the Committee, for matching programs conducted to produce background checks for foreign counterintelligence purposes. These exclusions are intended to allow all required security clearance investigations to be performed without application of the matching procedures required by this bill.

2. Matching Agreements

S. 496 requires that matching programs covered by the bill be conducted pursuant to written matching agreements. Section 2 of the bill specifies that no record contained in a system of records under the Privacy Act may be disclosed by a source agency to a federal agency or a non-federal entity for use in a computer matching program unless such disclosure is pursuant to a written matching agreement between the agency or entity disclosing the records and the agency receiving the records.

The purpose for requiring written agreements is to increase and facilitate oversight of the use of computer matching and to establish ground rules for the disclosure of information for matches, as well as for the use of information that is derived from computer matching programs.

S. 496 enumerates several elements that must be included in written matching agreements. All of these elements must be present in order for the written agreements to be approved by the Data Integrity Boards of the agencies involved in the matching program prior to the disclosure of the records.

First, the matching agreement must specify the justification, the purpose and legal authority for conducting the matching program.

Second, as amended by the House, the bill requires the matching agreement to describe the anticipated results of the matching program, including a specific estimate of any savings anticipated as a direct result of the compter match. This amendment requires a cost-benefit analysis to be completed before the Data Integrity Board can approve a matching agreement, and the House bill directs agencies entering into the matching agreement to follow guidelines developed by the General Accounting Office on how to assess the costs and benefits of computer matches. The House bill also includes a provision allowing the Data Integrity Board to waive this cost-benefit analysis in certain circumstances.

As passed by the Senate, S. 496 contains no specific requirement for a pre-match cost-benefit analysis. The Committee does, however, view as legitimate the concerns that some computer matching programs may not prove to be cost-effective. While some Inspectors General and program managers have estimated that computer matching programs that are conducted to remove ineligible persons from government programs will result in huge savings, these estimates have been rarely substantiated by comprehensive cost-benefit analyses that take into account all of the actual costs of conducting, and following-up on the results of, the matching program. Without a solid measure of the actual costs and benefits of all phases of the matching program, resources may be devoted to com-

puter matches when other efforts to reduce fraud, waste or abuse in government programs may actually be more cost-effective.

While recognizing the importance of cost-benefit analysis, the Committee is also concerned that mandating pre-match cost benefit analyses is inappropriate for those matching programs that are required by law. Thus, an amendment to the House-passed bill that the Committee would propose would specifically exempt these matches from the up-front cost-benefit analysis requirement. Since the costs of matching programs should be considered for those matches that will be repeated to determine if the matching program is truly cost-effective, the amendment further specifies that any subsequent matching agreement for a matching program specifically required by statute will not be approved by the Data Integrity Board unless the agency has submitted a cost-benefit analysis of the program as conducted.

Third, the matching agreement must describe the records that will be matched, including each data element used; the approximate number of records that will be matched; and the projected starting and completion dates of the matching program. The Committee recognizes that some matching programs, particularly those specifically mandated by statute, will involve a series of individual matches, at established intervals, between two sets of records. For example, AFDC records may be matched on a quarterly basis with unearned income data from the IRS. For such matches, the matching agreement should set forth the starting and completion dates of the matching program as a whole and the frequency of each individual match to take place within the program.

Fourth, the matching agreement must also describe the procedures for providing due process protections to individuals whose records are matched. Specifically, the agreement must set forth the procedures for providing notice to applicants and recipients of financial assistance or payments under federal benefit programs and to applicants for and holders of positions as federal personnel, that any information provided by them may be subject to verification through a matching program.

This provision requires individualized notice be givern at the time of application to a benefit program (or upon application for a position with the government) that the applicant's records may be matched. Constructive notice, such as a notice in the *Federal Register* that a match will be conducted, is insufficient to satisfy this requirement. The committee anticipates that the notice will be included on the application form itself, or with other notices provided to applicants. All notices provided must be plainly worded and noncoercive in tone.

Periodic notice that information may be verified through matching must also be given to persons who are receiving benefits or holding government positions. The Data Integrity Board may direct agencies on the form that periodic notice may take. The Committee expects that individualized periodic notices will be given whenever possible. Options for periodic notice include inclusion of notices with checks sent to recipients, or notices to agency personnel through memoranda or bulletins. While separate mailings of periodic notices are not required by the bill, they may be required by Data Integrity Boards or OMB for specific matches.

Fifth, the agreement must set forth the procedures for verifying information produced in such matching programs. Verification procedures must comply with the requirements set forth in the new section (p) of the Privacy Act as amended by this bill.

Sixth, the matching agreement must establish procedures for retention and destruction of records created by such matching programs. This provision is intended to prevent the creation of permanent files or new system of records from matching programs, because the existence of such "standing" files of "hits" from previous matches could too easily encourage the repeated use of these files for additional matching. The lisats of persons whose names emerged as "hits" in one match should not be retained as a list of suspects for future matches, as this poses serious threats to personal privacy. The Committee recognizes, however, that identifiable records created by a matching program must be retained for a reasonable period to allow necessary follow-up to a matching program. This provision is intended to ensure that records generated by a matching program are destroyed as soon as possible after they are no longer needed.

Seventh, the matching agreements must also specify procedures for ensuring the administrative, technical, and physical security of the records matched and of the results of the matching program, and must prohibit the duplication and redisclosure of records within or outside the source agency, unless required by law or essential to the conduct of the matching program. This provision is intended to allow only those disclosures that are necessary to complete the match itself and to complete all necessary verification and follow-up to the matching program, including disclosures or duplication of information for use in a civil or criminal investigation or prosecution resulting from a computer match.

Eighth, the matching agreement must specify procedures governing use of records provided by a source agency, including procedures governing the return to the source agency or the destruction of records used in such program. The intent of this provision is to ensure that records used for matching program be destroyed or returned to the source agency as soon as possible after the match is performed in order to minimizes dangers of unauthorized use.

The matching agreement must provide information that is available to the source of the records on any assessments that have been made on the accuracy of the records that will be used in the matching program. Use of inaccurate data can greatly diminish the value of matching programs by yielding many false "raw hits". If out-of-date wage data is matched against the records of beneficiaries, for example, it may appear that many individuals have excess earnings, when, in fact, the earnings data is no longer accurate. Use of such data not only increases the follow-up costs of matching, but also poses dangers of erroneously reducing benefits based on faulty data. This provision of S. 496, while not requiring agencies to undertake assessments of the accuracy of the data they disclose for matching programs, requires matching agreements to include information on any such assessments that have been made, (i.e., when the set of records was last "cleaned up") in order to provide the recipient agency with some sense of the accuracy of the information.

The House amendment to S. 496 adds a provision that matching agreements must authorize the Comptroller General to have access to all records of a recipient agency or non-federal entity for purposes of monitoring compliance with the agreement. This provision, which is acceptable to the Committee, extends existing statutory authority of the Comptroller General to the records of state and local governments.

The House amendment also adds a requirement that a copy of each matching agreement must be made available to the public. The agreement must also be provided to the Senate Committee on Governmental Affairs and the House Committee on Government Operations 30 days before the matching agreement becomes effective. This 30-day notice period to Congress is acceptable to the Committee and parallels other provisions of the Privacy Act requiring notification to Congress of routine uses and creation of new systems of records.

Finally, the House amendment includes a provision providing that matching agreements may remain in effect for a period determined to be appropriate by the Data Integrity Board, not to exceed 18 months. A matching program that will match the same two sets of records several times over a period of time (for example, matching wage data with AFDC records every three months) is considered one matching program. The bill authorizes the Data Integrity Board, without additional review, to renew a matching agreement for an on-going matching program for up to a year if the program will be conducted without change and if each party to the agreement certifies that the program has been conducted in compliance with the agreement. In determining the effective time period for the initial matching agreement, the Data Integrity Board should consider the purpose and length of time needed to conduct the match, and whether the match is required by law. This House amendment is acceptable to the Committee.

3. Data Integrity Boards

In order to improve the oversight of matching programs and compliance with matching agreements, applicable laws, regulations and guidelines, section 4 of S. 496 mandates each federal agency conducting or participating in a matching program establish a Data Integrity Board (DIB). A federal agency that acts as a source agency or recipient agency must establish a DIB, but agencies that do not participate in matching programs covered by the bill do not have to establish such boards. Although some matches covered by the bill will involve federal programs that are state-administered, no non-federal entity must establish a DIB.

Each agency's DIB must be composed of senior officials designated by the head of the agency. The law specifies that the senior official designated by the agency as responsible for implementation of the Privacy Act and the Inspector General of the agency, if any, must serve on the DIB, although the IG cannot serve as chairperson of the Board. The bill precludes the Inspector General from serving as chairperson because, historically, many computer matching programs have been proposed and conducted by IGs to deter fraud or waste in government programs. Since the DIB is intended to act as an overseer of computer matching programs, the Commit-

tee believes that the Board should not be headed by an Inspector General, who may head the office that is conducting the matching program.

The size of the DIB will vary according to the size of the agency and the number of matching programs in which the agency participates. Various agency components whose records are matched should be represented on the Board, and the Board should have adequate staff assigned to it to allow it to perform its statutory functions.

This legislation does not require agencies to create new positions to comply with this provision, nor should membership on the Boards, or on the staff of the Boards, constitute full-time positions. The Committee anticipates that the Board will meet as needed to approve and review matching agreements, and to prepare reports required by Section 5, and, in some circumstances, to investigate the operation of matching programs.

The bill sets forth specific functions for the Data Integrity Boards to perform.

Each Board must review, approve and maintain all written agreements for receipt or disclosure of agency records for matching programs to ensure compliance with the requirements of this Act and compliance with all relevant statutes and guidelines.

No disclosure of records can be made for a matching program unless the written matching agreement is approved. As passed by the Senate, a matching program could begin as soon as the Data Integrity Board approved the matching agreement. The House amendment to S. 496, however, adds a requirement that the written agreement first be made available to the public and sent to the Senate Governmental Affairs Committee and the House Government Operations Committee. The amendment makes the agreement effective 30 days after being transmitted to the Committees. This Committee endorses this amendment as providing necessary opportunity for congressional review and oversight of matching agreements.

The bill also authorizes the DIB to disapprove matching agreements if they do not comply with the terms of this Act, or applicable laws, regulations and guidelines. The bill sets up an appeals procedure to be followed when a DIB disapproves a matching agreement.

In cases of disapproval, any party to the agreement may appeal the disapproval to the Director of OMB. This appeals procedure is included in the House-passed bill, and accepted by the Committee, in order to prevent the DIB from exercising total veto power on matches. The Inspectors General, for example, expressed concern that agency officials on the DIB may have conflicts of interest when ruling on matching programs that are being conducted to find overpayments in the officials' own programs. There may be a danger of agency officials disapproving matches even when all applicable rules, regulations and guidelines have been followed.

The Committee believes that these conflict-of-interest concerns are legitimate and thus endorses the House amendment that provides the OMB with limited authority to overrule a DIB and approve a matching agreement. The disapproval of the DIB may be overturned only if the Director of the OMB determines that the

program will be consistent with all applicable legal, regulatory and policy requirements; that there is adequate evidence that the matching agreement will be cost-effective; and that the matching program is in the public interest. The Committee anticipates that all three factors must be met to warrant OMB reversal of a disapproval by the Board.

Under the terms of the House amendment, when OMB approves a matching agreement upon appeal, the decision must be reported to the Senate Committee on Governmental Affairs and to the House Committee on Government Operations. OMB must include a detailed explanation of the reasons for its approval. The matching agreement takes effect 30 days after the Committees are notified.

If a matching program proposed by the Inspector General of an agency is disapproved by the Data Integrity Board and by the Director of OMB, the Inspector General may report the disapproval to the head of the agency and to the Congress. The Committee believes that this reporting mechanism is an effective means of ensuring the independence of the Inspectors General, and of putting the Congress on notice of possible efforts by agencies or OMB to prohibit matching programs that are legitimate or proper to conduct.

Other Duties of the Data Integrity Boards

The bill sets forth several other functions for the DIB.

Each Board must review all matching programs in which the agency has participated during the year, either as a source or recipient agency. The purpose of the review is to determine compliance with applicable laws, regulations, guidelines, and matching agreements, and to assess the costs and benefits of such matching programs. While some investigation of compliance with matching agreements, laws, regulations, or guidelines may be warranted when indication of problems come to the Board's attention, the Board's review functions will primarily consist of reviews of information about matching programs and occasional audits of the matching programs.

Each board must review all recurring matching programs in which the agency has participated during the year, for continued justification of the program.

Each Board must prepare an annual report on matching for submission to the head of the agency and to Office of Management and Budget. The report of each Board must also be made available to the public upon request. OMB will consolidate the reports for the various Boards and file a single report with the Congress.

Reports by the Boards must describe the matching activities of the agency and must include: (i) a description of all matching programs in which the agency participated as a source or recipient agency; and (ii) a description of any matching agreements that were proposed but disapproved by the Board. The House amendment requires the following additional information to be included in the reports: (i) a description of any changes in the membership or structure of the Board in the preceding year; (ii) the reasons for any waiver of the requirement for the completion and submission of a cost-benefit analysis prior to the approval of a matching program; (iii) information about any violations of matching agree-

ments that have been alleged or identified and any corrective action taken; and (iv) any other information required by the Director of OMB to be included in the report. This Committee endorses the changes made by the House amendment.

Each Board is required to serve as a clearinghouse for receiving and providing information on the accuracy, completeness, and reliability of records used in matching programs.

Each Board is required to provide interpretation and guidance to agency components and personnel on the Privacy Act's matching requirements.

Each Board is required to review agency recordkeeping and disposal policies and practices for matching programs to assure compliance with the Privacy Act.

Finally, the bill provides discretionary authority for the Board to review and report on any matching activities that are not defined as matching programs by this bill, including matching programs exempted under section 5. The House amendment adds a provision allowing reports of such programs to be on an aggregate basis to the extent necessary to protect on-going law enforcement investigations. The Committee endorses this amendment as necessary to protect such investigations and believes that similar authority to report on an aggregate basis should extend to counterintelligence matches.

4. Verification and Due Process Protections

S. 496 includes provisions designed to provide due process protections for individuals whose records are matched in computer matching programs. Those protections take the form of requiring independent verification of data produced by a matching program, notice to the individual, and an opportunity for the individual to contest the findings of the matching program prior to adverse action being taken.

Before a recipient agency, non-federal entity or source agency may suspend, terminate, reduce, or make a final denial of any financial assistance or payment under a federal benefit program, or take any other adverse action against an individual as a result of information produced by a matching program, the agency must independently verify the information for its accuracy. This provision is intended to protect the subjects of matching programs against loss of benefits or adverse action due to erroneous or out-of-date information.

The independent verification requirements are not intended to duplicate procedures already required by the benefit program itself. The bill provides that the verification requirement may be satisfied by verification requirements that exist, by law or regulations, in the Federal benefit program, the eligibility for which the applicant's or recipient's records are being matched. Such federal benefit program procedures can satisfy the requirements of the bill so long as such procedures include independent investigation and confirmation of any information used as a basis for an adverse action against the individual. The bill sets forth information that must be verified, such as amount of asset or income involved, and whether and for what period the individual had actual access to the income. The verification procedures should be tailored to the

types of data produced by the match to determine fully whether it is accurate and timely.

The confirmation required by the bill can be made by asking the individual whose records are matched for confirmation of the information or by checking the data with another source that obtained the information independently. For example, confirmation of information indicating that a recipient of a benefit program has excessive interest or dividend income (obtained through a match with IRS records) could be achieved by asking the recipient to confirm the data or by asking the bank that reported the interest and dividend income to the IRS to confirm the information. The Committee believes that seeking confirmation from the individual himself or herself is preferable in most instances.

S. 496 also requires that the basic due process protections of notice and opportunity to contest findings be incorporated into every matching program within the scope of this bill. Specifically, no recipient agency, non-federal entity, or source agency may suspend, terminate, reduce, or make a final denial of any financial assistance or payment under a federal benefit program, or take any other adverse action against the individual, until a reasonable period after the individual receives a notice from the agency containing a statement of its findings and informing the individual of the opportunity to contest such findings.

As with the verification procedures, the bill does not intend the procedural protections of this bill to be a "double-layer" of procedures beyond those governing the federal benefit program involved. Rather, these requirements may be satisfied by the notice, hearing and appeal rights governing the program itself. The Committee recognizes that most federal benefit programs—and many matching programs mandated by law—already contain due process protections. This provision is intended to provide minimal due process protections for those matches that may not be subject to such rules, and to specifically direct those agencies who conduct matches to apply due process protections to matching programs.

The House amendment prohibits agencies from taking adverse action until 60 days after the individual has been notified and given an opportunity to contest findings. The Committee believes, however, that problems may emerge from the imposition of a mandatory 60-day rule. First, a strict 60-day rule could conflict with the procedural due process rules governing the federal benefit program itself, leaving confusion among agency administrators over which rule to follow. Second, in some instances a 60-day wait before taking adverse action could be too long, allowing ineligible individuals to continue to receive governnment benefits. Yet in other instances, 60 days may be shorter than the time allowed by the benefit program itself to contest findings.

To correct these problems, the Committee will propose replacing the House amendment's 60-day rule with a requirement that no adverse action be taken by an agency or non-federal entity until the notice period provided by the Federal benefit program's laws or regulations has expired (running from the date when notice and opportunity to contest findings were given), or 30 days, whichever is later. This provision will shorten the delay to minimize the danger of allowing erroneous payments to continue, while assuring

that a minimal response period of 30 days is given, which is necessary to comport with due process rights.

The House bill adds, and the Committe endorses, a limited exception to this waiting period. An agency may take any appropriate action that might otherwise be prohibited if it determines that public health or safety may be adversely or signficantly threatened within the waiting period. The Committee anticipates that this exception will be used rarely, and due process protections would still be afforded after the adverse action has occurred.

5. Reports to Congress

The House bill includes, and the Committee endorses, a requirement that the Director of OMB file a report to the Congress on matching activity. The purpose of this report is to consolidate the information contained in the reports of the Data Integrity Boards. The bill specifies elements that must be contained in these reports and specifies that the reports may contain other information that the Director determines to be relevant for oversight of matching. The reports must also include information about matching activities not covered by, or excluded by, the bill. Such information may take the form of aggregate data in order to protect any law enforcement activities that may be jeopardized by publicity or disclosure. The Committee would extend this provision to reporting on counterintelligence matching activities.

6. Sanctions

The sanction for violating the provisions of this bill is a prohibition against disclosure of records for a matching program. The bill provides that, notwithstanding any other provision of law, no source agency may disclose any record contained in a system of records to a federal agency or non-federal entity for a matching program if the source agency has reason to believe that the verification requirements of the bill, or the terms of the matching agreement are not being met by the agency receiving the records. The House amendment adds a provision, endorsed by the Committee, which prohibits renewal of a matching agreement by a source agency unless the receiving agency (or non-fedeal entity) has certified that it has complied with the matching agreement and if the source agency has no reason to believe that the certification is inaccurate.

V. Section-by-Section Analysis

S. 496, As Reported by the Committee on Governmental Affairs and Passed by the Senate (May 21, 1987)

SECTION 1—SHORT TITLE

This section provides that the act may be cited as the "Computer Matching and Privacy Protection Act of 1987."

SECTION 2—MATCHING AGREEMENTS

This section adds a new (b)(13) exception to the Privacy Act of 1974, 5 U.S.C. Section 552a, authorizing disclosures of records from

systems of records to a recipient agency or non-Federal matching entity pursuant to a matching agreement under this act.

This section also adds three new subsections to the Privacy Act, designated as subsections (o), (p), and (q).

Subsection (o)—Matching Agreements

Prior to disclosing any record in a system of records to a recipient agency or non-Federal matching entity for use in a computer matching program, the source agency and recipient agency (or non-Federal entity) must enter into a written agreement specifying 9 elements:

(1) the justification, purpose, and legal authority for conducting the program;

(2) a description of the records that will be matched, including each data element that will be used, the approximate number of records that will be matched, and the projected starting and completion dates of the matching program;

(3) procedures for notifying upon application and periodically thereafter applicants for or recipients of financial assistance or payments under Federal benefit programs, and applicants for and holders of positions as Federal personnel, that any information provided by such applicants, recipients, and holders may be subject to verification through matching programs;

(4) procedures for verifying information produced in such matching programs;

(5) procedures for retention and destruction of records created by such matching programs;

(6) procedures for ensuring the administrative, technical, and physical security of the records matched and the results of such programs;

(7) prohibitions on duplication and redisclosure of records provided by the source agency within or outside the recipient agency or the non-Federal matching entity, unless authorized by the source agency with the terms of the agreement;

(8) procedures for governing the use of the records provided by the source agency for use in a matching program, including procedures governing return to the source agency or destruction of the records used in the match; and

(9) information on assessments that have been made on the accuracy of the records that will be used in the matching program.

Subsection (p)—Verification

No recipient agency, non-Federal matching entity or source agency may suspend, terminate, reduce, or make a final denial of any financial assistance or payment under a federal benefit program to any individual, or take any other adverse action against an individual as a result of information produced by a matching program, until an office or employee of the agency has independently verified the information. The independent verification requirement may be satisfied either by verification requirements governing the federal benefit program and shall include independent verification of:

(A) the amount of the asset or income involved;

(B) whether the individual actually has or had access to such asset or income for the individual's own use;

(C) the period or periods when the individual actually had such asset or income.

No recipient agency, non-Federal matching entity or source agency may suspend, terminate, reduce, or make a final denial of any financial assistance or payment under a Federal benefit program to any individual whose records are used in a matching program, or may take other adverse action against the individual as a result of information produced by a matching program until the individual receives notice of the findings and has been given an opportunity to contest such findings. The opportunity to contest may be satisfied by notice, hearing, and appeal rights governing the Federal benefit program.

Subsection (q)—Sanctions

Notwithstanding any other provision of law, no source agency may disclose any record which is contained in a system of records to a recipient agency or non-Federal matching entity for a matching program if such source agency has reason to believe that the requirements of subsection (p) and any matching agreement entered into pursuant to subsection (o) are not being met by such recipient agency or entity.

SECTION 3—NOTICE OF MATCHING PROGRAMS

Subsection (a) amends subsection (e) of the Privacy Act by adding a new paragraph (12). The new paragraph requires source and recipient agencies to publish in the *Federal Register* notice of the establishment or revision of a matching program at least 30 days prior to conducting the program.

Subsection (b) amends subsection (r) (as redesignated) of the Privacy Act regarding reporting on new or changed systems of records. The new language extends the existing reporting requirement to matching programs.

SECTION 4—DATA INTEGRITY BOARDS

This section adds a new subsection (u) to the Privacy Act regarding Data Integrity Boards.

Paragraph (1) requires that every agency conducting or participating in a matching program shall establish a Data Integrity Board to oversee and coordinate among the various components of such agency the agency's implementation of the bill.

Paragraph (2) requires that each Data Integrity Board shall consist of senior officials designated by the head of the agency and shall include any senior official designated by the head of the agency as responsible for implementation of the Privacy Act. The Inspector General of the agency, if any, shall be a member of the Board, but the Inspector General shall not serve as chairman of the Board.

Paragraph (3) sets forth the functions of the Data Integrity Boards. These Boards shall:

(A) review, approve, and maintain all written agreements for receipt or disclosure of agency records for matching programs

to ensure compliance with subsection (o), and all relevant statutes, regulations, and guidelines;

(B) review all matching programs in which the agency has participated during the year, either as a source agency or recipient agency, determine compliance with applicable laws, regulations, and agency agreements, and assess the cost-benefits of such programs;

(C) review all recurring matching programs in which the agency has participated during the year, either as a source agency or recipient agency, for continued justification for such disclosures and for compliance with applicable laws, regulations, and matching agreements, and assess the cost-benefits of such programs;

(D) compile an annual report to the head of the agency and the Office of Management and Budget on the matching activities of the agency, including matching programs in which the agency has participated as a source agency or recipient agency; matching agreements proposed under subsection (o) that were disapproved by the Board; and the matching of records as a source agency or recipient agency under programs not covered by this section or described in subparagraphs (A) through (E) of subsection (a)(8);

(E) serve as a clearinghouse for receiving and providing information on the accuracy, completeness, and reliability of records used in matching programs;

(F) provide interpretation and guidance to agency components and personnel on the requirements of this section with respect to matching programs;

(G) review agency recordkeeping and disposal policies and practices with regard to matching programs to assure compliance with this section; and

(H) review and coordinate privacy training programs for the agency's personnel.

Paragraph (4) provides that each Board shall maintain such staff as necessary to carry out its functions under this subsection, including persons designated by the head of the agency as responsible for implementation of the Privacy Act.

Paragraph (5) directs OMB to file an annual report with the Congress which consolidates the information contained in the reports from the Boards.

SECTION 5—DEFINITIONS

This section adds new definitions to the Privacy Act.

"Matching program" means any computerized comparison of (i) two or more automated systems of records or a system of records with non-Federal records for the purpose of (I) establishing or verifying the eligibility of, or continuing compliance with statutory and regulatory requirements by, applicants for, recipients or beneficiaries of, participants in, or providers of services with respect to, cash or in-kind assistance or payments under Federal benefits programs, or (II) recouping payments or delinquent debts under Federal benefit programs, or (ii) two or more automated Federal person-

nel or payroll systems of records or a system of Federal personnel or payroll records with non-federal records.

A matching program does not include: (i) matches performed to produce aggregate statistical data without any personal identifiers; (ii) matches performed to support any research or statistical project, the specific data of which may not be used to make decisions concerning the rights, benefits or privileges of specific individuals; (iii) matches performed by a source agency in which no records are matched outside the source agency, unless the records involve a comparison of the source agency's personnel or payroll records with the records of a Federal benefit program administered by the agency; (iv) matches performed by an agency or component which performs as its principal function any activity pertaining to the enforcement of criminal laws, subsequent to the initiation of a specific law enforcement investigation for the purpose of gathering evidence against named individuals; (v) matches of tax information pursuant to section 6103(d) of the Internal Revenue Code of 1986; and (vi) matches performed to produce background checks for security clearances of federal personnel.

"Recipient agency" means any agency, or contractor thereof, receiving records contained in a system of records from a source agency for use in a matching program.

"Non-Federal entity" means any State or local government, or agency thereof, partnership, corporation, association, or public or private organization receiving records contained in a system of records from a source agency for use in a matching program;

"Source agency" means any agency or any State or local government, or agency thereof, which discloses records contained in a system of records to be used in a matching program;

"Federal benefit program" means any program administered by the Federal Government, or any agent thereof, providing cash or in-kind assistance in the form of payments, grants, loans, or loan guarantees to individuals.

"Federal personnel" means officers and employees of the Government of the United States, members of the uniformed services (including members of the Reserve Components), individuals entitled to receive immediate or deferred retirement benefits under any retirement program of the Government of the United States (including survivor benefits).

VI. Estimated Cost of Legislation

U.S. Congress,
Congressional Budget Office,
Washington, DC, September 12, 1988.

Hon. John Glenn,
Chairman, Committee on Governmental Affairs,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has revised its cost estimate for S. 496, the Computer Matching and Privacy Protection Act of 1987, as passed by the Senate, May 21, 1987. This estimate supersedes our previous estimate dated August 5, 1988.

Based on information provided by the Department of Health and Human Services (HHS), the Department of Defense and a Member of other agencies, CBO estimates that enacting this legislation would result in costs to the federal government of up to $2 million during the first year after enactment, and less than $1 million annually thereafter.

S. 496 would establish procedures to regulate the use of computer matching by federal agencies or by nonfederal agencies with federal records. These procedures would include preparing matching agreements with agencies when sharing data, providing the right to appeal to individuals affected by information obtained in a match, and establishing data integrity boards to oversee matching activities.

Most of the costs associated with the act would result from preparing matching agreements required by section 2 of the act. Although agencies currently have agreements covering some matching activities, S. 496 would require more extensive agreements, and would require them for all matches. The agreements would specify the purpose and legal authority of the match, the methodology to be used, and expected results; they would also include notification and verification procedures for indiviuals affected by a match.

The magnitude of the first-year costs is difficult to predict. If existing matching agreements would satisfy the requirements of the act, then there would be little additional cost to the government. However, if the existing agreements would need substantial additional work, CBO estimates that costs would be around $1 million during the first year after enactment. Costs in future years would be much lower, because the agreements would probably need only minor updating.

Another potential cost associated with enacting S. 496 would be establishing data integrity boards required by Section 4. These boards would oversee an agency's matching activities, and would review the matching agreements required by Section 2. Many agencies already have some type of formal or informal group similar to a data integrity board. Nevertheless, because many agencies would probably devote more time to these activities, there would be some additional cost to the government, probably less than $1 million annually.

Section 4 would also require agencies to prepare cost/benefit analyses for all proposed matches, which would be reviewed by the data integrity boards. Preparing these analyses would probably result in some additional costs, but they would also discourage agencies from attempting some matches that would not be cost effective. CBO expects that these two effects would probably offset each other and, therefore, would result in no significant costs or savings to the government.

CBO does not expect other sections of S. 496 to have a significant effect on the federal budget. These sections would, among other things, require federal agencies to publish in the Federal Register notice of matching programs with nonfederal entities and exempt matches formed for statistical or law enforcement purposes from the act's requirements.

Estimated Cost to State and Local Governments.—CBO expects that enacting S. 496 would require state and local agencies in-

volved in computer matching with federal agencies to adopt some new procedures to comply with the verification and notification requirements of the act, and to expand matching agreements with federal agencies. Based on information provided by the American Public Welfare Association and the National Association of State Information Systems, CBO estimates that the costs associated with these activities would not be significant.

Previous CBO Estimate.—On August 5, 1988, CBO prepared an estimate for this bill. That earlier analysis discussed the potential budget impact that would result if programs in the Office of Child Support Enforcement at the Department of Health and Human Services (HHS) were covered by this bill. New information provided by HHS indicates that report language accompanying the bill is sufficient to establish that these programs are not covered.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Michael Sieverts, who can be reached at 226–2860.

Sincerely,

JAMES L. BLUM,
Acting Director.

VII. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory and paperwork impact of S. 496, the Computer Matching and Privacy Protection Act of 1987.

S. 496, as reported, requires federal agencies participating in computer matching programs, as defined by the bill, to enter into written matching agreements prior to disclosing records for such matching programs. The bill also establishes Data Integrity Boards, within agencies participating in matching programs, to oversee and coordinate implementation of S. 496. Finally, the bill establishes procedural safeguards for individuals whose records are matched in programs covered by the Act.

While the bill requires Federal agencies to enter into matching agreements prior to conducting or participating in matching programs covered by the bill, and requires agencies to establish procedures to verify information obtained from computer matching programs, the Committee does not believe that this will result in any additional regulatory impact on individuals whose records are used in computer matching programs covered by S. 496, since such individuals already would be subject to the rules and regulations governing the Federal benefit programs involved in the matching program. The Committee believes that this bill will enhance the personal privacy rights of individuals whose records are exchanged in matching programs, since S. 496 establishes procedural safeguards on the disclosures of records for computer matching purposes. The Committee does not foresee any significant paperwork impact resulting from this legislation.

VIII. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standard Rules of the Senate, changes in existing law made by the bill, as

reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 5, UNITED STATES CODE

PART I—THE AGENCIES GENERALLY

* * * * * * *

CHAPTER 5—ADMINISTRATIVE PROCEDURE

* * * * * * *

SUBCHAPTER II—ADMINISTRATIVE PROCEDURE

* * * * * * *

§ 552a. Records maintained on individuals

(a) DEFINITIONS.—For purposes of this section—

(1) * * *

* * * * * * *

(6) the term "statistical record" means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of title 12; [and]

(7) the term "routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected[.];

(8) the term "matching program"—

(A) means any computerized comparison of—

(i) two or more automated systems of records of a system of records with non-Federal records for the purpose of—

(I) establishing or verifying the eligibility of, or continuing compliance with statutory and regulatory requirements, by applicants, recipients, beneficiaries, or participants for, or providers of services with respect to, financial assistance or payments under Federal benefit programs, or

(II) recouping payments or delinquent debts under such Federal benefit programs, or

(ii) two or more automated Federal personnel or payroll systems of records or a system of Federal personnel or payroll records with a set of non-Federal records,

(B) but does not include—

(i) matches performed to produce aggregate statistical data without any personal identifiers;

(ii) matches performed to support any research or statistical project, the specific data of which cannot be used to make decisions concerning the rights, benefits, or privileges of specific individuals;

(iii) matches performed by a source agency in which no records are matched outside such source agency or any component thereof, unless those matches involve a comparison of the source agency's personnel or payroll records with the records of a Federal benefit program administered by that agency;

(iv) matches performed subsequent to the initiation of a specific law enforcement investigation by an agency or component thereof, which performs as its principal function any activity pertaining to the enforcement of criminal laws, for the purpose of gathering evidence for a prospective law enforcement proceeding against named individuals;

(v) matches of tax information pursuant to section 6103(d) of the Internal Revenue Code of 1986; or

(vi) matches performed to produce background checks for security clearance of Federal personnel;

(9) the term "recipient agency" means any agency, or contractor thereof, receiving records contained in a system of records from a source agency for use in a matching program;

(10) the term "non-Federal entity" means any State or local government, or agency thereof, partnership, corporation, association, or public or private organization receiving records contained in a system of records from a source agency for use in a matching program;

(11) the term "source agency" means any agency or any State or local government, or agency thereof, which discloses records contained in a system of records to be used in a matching program;

(12) the term "Federal benefit program" means any program administered by the Federal Government, or any agent thereof, providing cash or in-kind assistance in the form of payments, grants, loans, or loan guarantees to individuals; and

(13) the term "Federal personnel" means officers and employees of the Government of the United States, members of the uniformed services (including members of the Reserve Components), individuals entitled to receive immediate or deferred retirement benefits under any retirement program of the Government of the United States (including survivor benefits).

* * * * * * *

(b) CONDITIONS OF DISCLOSURE.—No agency shall disclose any record which is contained in a system of records by any means of communications to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be—

(1) * * *

* * * * * * *

(11) pursuant to the order of a court of competent jurisdiction; [or]

(12) to a consumer reporting agency in accordance with section 3711(f) of title 31[.]; *or*

(13) to a recipient agency or non-Federal matching entity pursuant to a written matching agreement under subsection (o) of this section.

* * * * * * *

(e) AGENCY REQUIREMENTS.—Each agency that maintains a system of records shall—

(1) * * *

(10) establish appropriate administrative, technical, and physical safeguards to ensure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained; [and]

(11) at least 30 days prior to publication of information under paragraph 4(D) of this subection, publish in the Federal Register notice of any new use or intended use of the information in the system, and provide an opportunity for interested persons to submit written data, views, or arguments to the agency[.]; *and*

(12) if such agency is a recipient agency or a source agency in a matching progam with a non-Federal matching entity, with respect to any establishment or revision of a matching program, at least 30 days prior to conducting such program, publish in the Federal Register notice of such establishment or revision.

(b) REPORT TO CONGRESS AND OFFICE OF MANAGEMENT AND BUDGET.—

(1) IN GENERAL.—Subsection (r) of section 552a of title 5, United States Code, as redesignated by section 2(b)(1) of this Act, is amended by striking out "system of records"and inserting in lieu thereof "system of records or matching program".

(2) CLERICAL AMENDMENT.—The heading of such subsection (r) is amended by inserting "or Programs" after "Systems".

* * * * * * *

(o) MATCHING AGREEMENTS.—Prior to disclosing any record which is contained in a system of records to a recipient agency or non-Federal matching entity for use in a computer matching program, a source agency and the recipient agency or non-Federal matching entity shall enter into a written agreement specifying—

(1) the justification, purpose and legal authority for conducting the program;

(2) a description of the records that will be matched, including each data element that will be used, the approximate number of records that will be matched, and the projected starting and completion dates of the matching program;

(3) procedures for notifying upon application and periodically thereafter—

(A) applicants for and recipients of financial assistance or payments under Federal benefit programs, and

(B) applicants for and holders of positions as Federal personnel, that any information provided by such applicants, recipients, and holders may be subject to verification through matching programs;

(4) procedures for verifying information produced in such matching program as required by subsection (p);

(5) procedures for retention and destruction of records created by such matching program;

(6) procedures for ensuring the administrative, technical, and physical security of the records matched and the results of such programs;

(7) prohibitions on duplication and redisclosure of records provided by the source agency within or outside the recipient agency or the non-Federal matching entity, unless authorized by the source agency with the terms of the authorization;

(8) procedures governing the use of the records provided by the source agency for use in a matching program including procedures governing return to the source agency or destruction of the records used in such prorgam; and

(8) procedures governing the use of the records provided by the source agency for use in a matching program including procedures governing return to the source agency or destruction of the records used in such program; and

(9) information on assessments that have been made on the accuracy of the records that will be used in such matching program.

(p) VERIFICATION AND OPPORTUNITY TO CONTEST FINDINGS.—(1) In order to protect any individual whose records are used in matching programs, no recipient agency, non-Federal matching entity, or source agency may suspend, terminate, reduce, or make a final denial of any financial assistance under a Federal benefit program to such individual, or take other adverse action against such individual as a result of information produced by such matching programs, until such agency or entity has independently verified such information. Subject to the requirements of this subsection, such independent verification may be satisfied by verification requirements governing such Federal benefit program.

(2) Independent verification required by paragraph (1) shall include verification of—

(A) the amount of the asset or income involved,

(B) whether such individual actually has or had access to such asset or income for such individual's own use, and

(C) the period or periods when the individual actually had such asset or income.

(3) No recipient agency, non-Federal matching entity, or source agency may suspend, terminate, reduce, or make a final denial of any assistance under a Federal benefit program to any individual described in paragraph (1), or take other adverse action against such individual as a result of information produced by a matching program, until such individual has been notified by such agency or entity of its findings and has been given an opportunity to contest such findings. Such opportunity may be satisfied by notice, hearing, and appeal rights governing such Federal benefit program.

(q) SANCTIONS.—Notwithstanding any other provison of law, no source agency may disclose any record which is contained in a system of records to a recipient agency or non-Federal matching entity for a matching program if such source agency has reason to believe that the requirements of subsection (p) and any matching

agreement entered into pursuant to subsection (o) are not being met by such recipient agency or entity.

[(o)] *(r)* REPORT ON NEW SYSTEMS.—Each agency shall provide adequate advance notice to Congress and the Office of Management and Budget of any proposal to establish or alter any system of records in order to permit an evaluation of the probable or potential effect of such proposal on the privacy and other personal or property rights of individuals or the disclosure of information relating to such individuals, and its effect on the preservation of the constitutional principles of federalism and separation of powers.

[(p)] *(s)* ANNUAL REPORT.—The President shall annually submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report—

(1) describing the actions of the Director of the Office of Management and Budget pursuant to section 6 of the Privacy Act of 1974 during the preceding year;

(2) describing the exercise of individual rights of access and amendment under this section during such year;

(3) identifying changes in or additions to systems of records;

(4) containing such other information concerning administration of this section as may be necessary or useful to the Congress in reviewing the effectiveness of this section in carrying out the purposes of the Privacy Act of 1974.

[(q)] *(t)*(1) EFFECT OF OTHER LAWS.—No agency shall rely on any exemption contained in section 552 of this title to withhold from an individual any record which is otherwise accessible to such individual under the provisions of this section.

(2) No agency shall rely on any exemption in this section to withhold from an individual any record which is otherwise accessible to such individual under the provisions of section 551 of this title.

(u) DATA INTEGRITY BOARDS.—(1) Every agency conducting or participating in a matching program shall establish a Data Integrity Board to oversee and coordinate among the various components of such agency the agency's implementation of this section.

(2) Each Data Integrity Board shall consist of senior officials designated by the head of the agency, including any senior official designated by the head of the agency as responsible for implementation of this section, and the inspector general of the agency, if any. The inspector general shall not serve as a chairman of the Data Integrity Board.

(3) Each Data Integrity Board shall perform the following function:

(A) review, approve, and maintain all written agreements for receipt or disclosure of agency records for matching programs to ensure compliance with subsection (o), and all relevant statutes, regulations, and guidelines;

(B) review all matching programs in which the agency has participated during the year, either as a source agency or recipient agency, determine compliance with applicable laws, regulations, and agency agreements, and assess the cost-benefits of such programs;

(C) review all recurring matching programs in which the agency has participated during the year, either as a source agency or recipient agency, for continued justification for such

disclosures and for compliance with applicable laws, regulations, and agency agreements, and assess the cost-benefits of such programs;

(D) compile an annual report to the head of the agency and the Office of Management and Budget on the matching activities of the agency, including—

(i) matching programs in which the agency has participated as a source agency or recipient agency;

(ii) matching agreements proposed under subsection (o) that were disapproved by the Board; and

(iii) the matching of records as a source agency or recipient agency under programs not covered by this section or described in subparagraphs (A) through (E) of subsection (a)(8);

(E) serve as a clearinghouse for receiving and providing information on the accuracy, completeness, and reliability of records used in matching programs;

(F) provide interpretation and guidance to agency components and personnel on the requirements of this section with respect to matching programs;

(G) review agency recordkeeping and disposal policies and practices with regard to matching programs to assure compliance with this section; and

(H) review and coordinate privacy training programs for the agency's personnel.

(4) Each Data Int grity Board shall maintain such staff as necessary to carry out its functions specified by this subsection. Such staff shall include persons designated by the head of the agency as responsible for implementation of this section.

(5) The Director of the Office of Management and Budget shall annually consolidate in a report to the Congress the information contained in the reports from the various Data Integrity Boards under paragraph (3)(D).

○

Calendar No. 990

100TH CONGRESS
2d Session

SENATE

REPORT
100-546

FOREST WILDFIRE EMERGENCY PAY EQUITY ACT OF 1988

REPORT

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

to accompany

S. 1911

TO AMEND TITLE 5, UNITED STATES CODE, TO ALLOW ALL FOREST FIRE FIGHTING EMPLOYEES TO BE PAID OVERTIME WITHOUT LIMITATION WHILE SERVING ON FOREST FIRE EMERGENCIES

SEPTEMBER 23 (legislative day, SEPTEMBER 7), 1988.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE
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100TH CONGRESS
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SENATE

REPORT
100-546

FOREST WILDFIRE EMERGENCY PAY EQUITY ACT OF 1988

SEPTEMBER 23 (legislative day SEPTEMBER 7), 1988.—Ordered to be printed

Mr. GLENN, from the Committee on Governmental Affairs, submitted the following

REPORT

[To accompany S. 1911]

The Committee on Governmental Affairs, to which was referred the bill (S. 1911) to allow all forest fire fighting employees to be paid overtime without limitation while serving on forest fire emergencies, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

CONTENTS

		Page
I.	Purpose and Background	1
II.	Legislative History	2
III.	Regulatory Impact of Legislation	3
IV.	Cost Estimate of Legislation	3
V.	Changes in Existing Law	4

I. PURPOSE AND BACKGROUND

The purpose of this legislation is to provide full compensation to forest firefighters who are assigned to work on, or in support of, forest wildfire emergencies. Prior to the enactment of the Continuing Resolution for FY88, Public Law 100-202, a firefighter's overtime pay was capped at the maximum rate payable to a GS-15 for any given pay period. The provision contained in Section 319 of the Department of Health and Human Services Appropriations bill included in the Continuing Resolution lifted this cap for FY88. S. 1911 would remove the cap on a permanent basis.

If required by an emergency situation to put in extensive overtime, these firefighters can be in the position of not being paid for all of their overtime hours. In the past, this indeed has been the

case. Firefighters, battling forest fires, have worked overtime and not received complete compensation for those hours. This has been increasingly true over the past three years, during which there have been exceptionally destructive and extensive forest fires.

By lifting the GS–15 cap for a given pay period, S. 1911 simply ensures that any forest firefighter, required to work on a forest wildfire emergency, will receive full compensation for the hours spent working on that blaze.

II. Legislative History

S. 1911 was introduced by Senators Mark Hatfield and Pete Domenici on December 3, 1987. The bill was referred to the Subcommittee on Federal Services, Post Office and Civil Service. The subcommittee reviewed the legislation and made several changes to the bill. A subcommittee substitute was unanimously polled out of the subcommittee on July 7, 1988. The Governmental Affairs Committee approved the subcommittee substitute on July 12, 1988.

The following letter was submitted to the Chairman of the Appropriations Committee as required by the Conference Report accompanying Public Law 100–202. The definition of "in support of" included in this letter was incorporated in the subcommittee substitute of S. 1911.

Department of Agriculture,
Office of Assistant Secretary for Administration,
Washington, DC, January 19, 1988.

Hon. John C. Stennis,
Chairman, Committee on Appropriations, U.S. Senate, Washington, DC.

Dear Mr. Chairman: As directed by the managers on page 926 of the Conference Report 100–498 on the FY 1988 Continuing Resolution, the Secretaries of the Department of Agriculture and the Department of the Interior have cooperated with the Office of Personnel Management in identifying duties that are performed "in support of" wildfire emergencies for the purposes of implementing Section 319 of the Department of the Interior and Related Agencies Appropriations Act of 1988, as incorporated in Section 101(g) of Public Law 100–202.

We have defined "in support of" wildfire emergencies to mean "duties performed during a temporary assignment to work on a wildland fire suppression for which the employees' salary costs are to be paid from funds provided to the Forest Service, Bureau of Land Management, National Park Service, U.S. Fish and Wildlife Service or the Bureau of Indian Affairs for fire fighting."

Sincerely,

John J. Franke, Jr.,
Assistant Secretary for Administration,
U.S. Department of Agriculture.

Rick Ventura,
Assistant Secretary-Policy, Budget and Administration,
U.S. Department of the Interior.

Concurrence:

Claudia Cooley,
Associate Director, Personnel Systems
and Oversight Group,
U.S. Office of Personnel Management.

The subcommittee substitute also includes a section which places a cap on the annual salary which can be paid a firefighter as a result of receiving overtime pay. This annual cap means that, while for any pay period a firefighter may receive more than the maximum payable to a GS–15, the firefighter cannot receive annually more than is payable a GS–15. This provision will ensure that

S. 1911 does not invite abuse of the new overtime pay provisions. According to the Office of Personnel Management and the affected agencies, this annual cap should not be problematic and will not result in firefighters working without pay.

III. Regulatory Impact of Legislation

Paragraph 11(b)(1) of rule XXVI of the Standing Rules of the Senate requires that each report accompanying a bill evaluate "the regulatory impact which would be incurred in carrying out the bill." This enactment of this legislation will require the modification of existing regulations regarding the overtime pay of emergency firefighters. This should not place an undue burden on the Office of Personnel Management or the agencies affected by this legislation.

IV. Cost Estimate of Legislation

Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office (CBO) has reviewed the cost implications of S. 1911. The following is CBO's estimate of the potential costs of this legislation:

U.S. Congress,
Congressional Budget Office,
Washington, DC, September 16, 1988.

Hon. John Glenn,
Chairman, Committee on Governmental Affairs, U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed S. 1911, the Forest Wildfire Emergency Pay Equity Act of 1988, as ordered reported by the Senate Committee on Governmental Affairs, July 14, 1988. Enactment of this bill would result in costs to the federal government of between $100,000 and $200,000 in most years, but as much as $1.5 million in years with serious forest fires. The bill would result in no costs to state and local governments.

S. 1911 would amend title 5 of the United States Code to remove the existing cap on overtime pay for certain categories of fire fighters. The bill would affect primarily supervisory and managerial staff, as most other fire fighters are covered by the Fair Labor Standards Act, which does not permit limits on overtime. Under current law, total pay for affected fire fighters in any two-week pay period cannot exceed the GS–15 level. This bill would change that restriction to an annual cap, providing that fire fighters' total annual pay should not exceed the GS–15 level.

The need for overtime for fire fighting varies widely from year to year, depending on weather and forest conditions. There is little historical data available with which to estimate future costs. However, the experience of the past two years provides some indication of the possible variation in costs. In 1986, Forest Service employees contributed 8,340 hours of uncompensated overtime having a total value of $144,000. In 1987, a year with an unusually high number of fires, employees contributed 54,981 hours with a total value of $978,063. Fire fighters in the Department of the Interior (DOI), the other agency affected by this bill, contributed $320,000 in overtime in 1987. In the last 20 years there have been four such high years (1970, 1978, 1987, and now 1988).

Because of this extreme variability, it is difficult to estimate with precision the costs of this bill in any given year. Based on information from the Forest Service and DOI, it appears likely that most years will be closer to 1986 than to 1987 and 1988. However, dry weather and fire emergencies could dramatically increase the costs in some years.

Based on 1986 and 1987 data, we estimate that costs could range from $0.1 million in years with few fire emergencies up to $1.5 million in very dry years with intense peaks of activity. In most years, costs would be towards the low end of the range.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Marta Morgan, who can be reached at 226–2860.

Sincerely,

James L. Blum, *Acting Director.*

V. Changes in Existing Law

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 1911, as reported, are as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is shown in roman):

§ 5547. Limitation on premium pay

(a) An employee may be paid premium pay under sections 5542, 5545(a)–(c), and 5546(a), (b) *5545(a), (b), and (c), and 5546(a) and (b)* of this title only to the extent that the payment does not cause his aggregate rate of pay for any pay period to exceed the maximum rate for GS–15. The first sentence of this section shall not apply to any employee of the Federal Aviation Administration or the Department of Defense who is paid premium pay under section 5546a of this title.

(b)(1) The provisions of subsection (a) shall not apply to the pay of any forest firefighter for any pay period in which such firefighter is assigned to work on, or in support of, forest wildfire emergencies.

(2) Notwithstanding the provisions of paragraph (1), no forest firefighter employee may be paid premium pay to the extent that the aggregate rate of pay of such employee for the aggregate of all pay periods in any calendar year exceeds the maximum rate for GS–15 as provided under the General Schedule pursuant to subchapter III of chapter 53 of title 5, United States Code.

(3) For purposes of this subsection , the term—

(A) "forest firefighter" means any employee of the Department of Agriculture or the Department of the Interior who is assigned to work on, or in support of, forest wildfire emergencies; and

(B) "in support of" means duties performed during a temporary assignment to work on a wildland fire suppression for which the salary costs of employees shall be paid from funds provided to the Forest Service, Bureau of Land Management, National Park Service, United States Fish and Wildlife Service or the Bureau of Indian Affairs for fire fighting.

○